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42
 43 UNITED STATES DISTRICT COURT
 44
 45 NORTHERN DISTRICT OF CALIFORNIA
 46
 47 SAN FRANCISCO DIVISION

48 BSD CROWN, LTD.,

49 v.
 50 Plaintiff,

51 v.
 52 AMAZON.COM, INC., AMAZON WEB
 53 SERVICES, INC., and TWITCH
 54 INTERACTIVE, INC.,

55 Defendants.

56 Case No. 3:23-cv-00057-WHO

57 **JOINT CASE MANAGEMENT
 58 STATEMENT**

60 Date: October 15, 2024
 61 Time: 2:00 p.m.
 62 Location: Zoom Videoconference
 63 Judge: Hon. William H. Orrick

1 The Parties submit this joint case management statement as directed by the Court's August
 2 19, 2024 Order Denying Motion to Lift Stay and Setting Case Management Conference. ECF No.
 3 116. This case was originally stayed on March 29, 2024, pending the outcome of an *ex parte*
 4 reexamination filed by third-party requester, Unified Patents, LLC. ECF No. 109. It remains stayed
 5 pending a different *ex parte* reexamination, one filed by Defendant Amazon.com, Inc.

6 **I. Stay Pending Reexamination**

7 On August 19, 2024, the Court ordered the continued stay of these proceedings pending the
 8 outcome of Amazon.com, Inc.'s EPR. ECF No. 116. As the status of the EPR has not changed since
 9 its filing, the parties agree to maintain the stay.

10 **II. Status of Reexamination**

11 In this litigation, Plaintiff B.S.D. Crown ("BSD") has asserted claims 1, 2, 8, 9, 10, 11, 12,
 12 13, 14, 21, 23, and 24 (the "Asserted Claims") of U.S. Patent No. 6,389,473 ("473 Patent") against
 13 Amazon.com, Inc., Amazon Web Services, Inc. and Twitch Interactive, Inc. (collectively,
 14 "Defendants").

15 On September 1, 2023, non-party Unified Patents, LLC filed a request for an *ex parte*
 16 reexamination of '473 Patent claims 1, 2, 13, 21, 23, 24, 25, 36, 37, 38, and 41. On August 5, 2024,
 17 the USPTO issued a reexamination certificate confirming the patentability of each challenged
 18 claim.

19 On August 15, 2024, Defendant Amazon.com, Inc. filed a Request for *Ex Parte*
 20 Reexamination ("EPR") of the '473 Patent directed to all the Asserted Claims. A decision on a
 21 request for an EPR must be made no later than *three* months from its filing. MPEP § 2209. As of
 22 this morning, no decision on the EPR has been issued, but one is expected by no later than
 23 November 15, 2024.

24 **III. Third Party Discovery**

25 In the Order Denying Motion to Lift Stay and Setting Case Management Conference (ECF
 26 No. 116), the Court indicated that Plaintiff's concerns regarding the destruction of third-party
 27 evidence may be raised at the next case management conference. ECF No. 116 at 2.

1 **PLAINTIFF'S POSITION.**

2 Third parties play an important role in this litigation. ECF No. 45 at 3-4 (Joint Case
 3 Management Statement) (“BSD anticipates needing discovery on . . . Defendants’ agreements with
 4 affiliates and third parties to provide video streaming products and services,” and “BSD may also
 5 pursue, for purposes of at least damages and indirect infringement, third party discovery directed
 6 to at least Paramount Global (formerly, Viacom), PAC-12 Conference, the National Football
 7 League, and others, pending information learned during party discovery”). Not only are they
 8 relevant to damages in the sense of providing information from which BSD may develop its
 9 damages models (*e.g.*, importance of streaming to their business, royalty rates, and relevance of
 10 smooth video to the public perception of streaming quality), but third-parties are also in the unique
 11 position of potentially possessing latency data, one of the hotly disputed topics in this litigation
 12 which revolves around whether a video stream is sufficiently “real-time” to be encompassed by
 13 Claim 1 of the ’473 Patent.

14 According to Defendants, non-parties possess essential stream latency data that resides only
 15 with them. *See* ECF 110-4, R. Brewer Letter to K. Gottuso dated Aug. 8, 2023 at 2 (claiming that
 16 AWS does not possess important infringement information pertaining to latency because “AWS
 17 provides enterprise-facing products that are intended to be flexible and tailored to the individual
 18 customer’s implementations and specific information about latency between configurations is not
 19 needed”). To date, despite BSD’s numerous demands, Defendants have refused to identify non-
 20 party streaming partners.

21 For at least these reasons, as this litigation has been stayed for several months, BSD is
 22 concerned that non-parties may inadvertently destroy evidence crucial to BSD’s claims.

23
 24 **A. BSD Has Identified Relevant Third Parties Through Public Information**

25 Based on public information, BSD has identified as potentially relevant the following: (a)
 26 third party “content providers,” (b) former third-party content provider employees, and (c) former
 27 Defendant employees.

1	Third-Party Content Providers	Plaintiff's Disclosure Document	Topic
2	Pac-12 Conference	ECF No. 1 at ¶6	Damages and infringement
3	National Football League	ECF No. 1 at ¶6	Damages and infringement
4	University of Notre Dame	ECF No. 1 at ¶6	Damages and infringement
5	International Olympic Committee	ECF No. 1 at ¶6	Damages and infringement
6	Fédération Internationale de Football Association (World Cup)	ECF No. 1 at ¶6	Damages and infringement
7	NBCUniversal Media, LLC (NBC Sports)	June 14, 2023 Fed.R.Civ.P. 26 Initial Disclosures	Damages and infringement
8	Paramount Global	January 16, 2024 Subpoena (document production and testimony remains stayed)	Damages and infringement
9			
10	Former Third-Party Content Provider Employees		
11	Mark Kramer (Former Pac-12 Networks, Vice President, Engineering & Technology)	June 14, 2023 Fed.R.Civ.P. 26 Initial Disclosures	Damages and infringement
12	Michelle McKenna-Doyle (Former NFL Chief Information Officer)	June 14, 2023 Fed.R.Civ.P. 26 Initial Disclosures	Damages and infringement
13	Matt Swensson (NFL Vice President, Emerging Products and Technology)	June 14, 2023 Fed.R.Civ.P. 26 Initial Disclosures	Damages and infringement
14	Pierluigi Gazzolo (Former Viacom President of Streaming & Studios)	June 14, 2023 Fed.R.Civ.P. 26 Initial Disclosures	Damages and infringement
15			
16	Former Defendant Employees		
17	Chih-Chiang Lu (Former Twitch Senior Software Engineer)	June 14, 2023 Fed.R.Civ.P. 26 Initial Disclosures	Infringement
18	Ivan Marcin (Former Twitch Senior Engineering Manager)	June 14, 2023 Fed.R.Civ.P. 26 Initial Disclosures	Infringement
19	Yueshi Shen (Former AWS/Twitch Principal Engineer)	June 14, 2023 Fed.R.Civ.P. 26 Initial Disclosures	Damages and Infringement
20	Jeff Gong (Former Twitch Software Engineer)	June 14, 2023 Fed.R.Civ.P. 26 Initial Disclosures	Infringement
21			

1 The only third-party that BSD was able to contact before the stay of these proceedings was
2 Paramount Global.

3 **B. Defendants Have Refused to Identify Third-Party Content Providers**

4 To date, Defendants have not identified third-party content providers. Document requests
5 directed to the identity of these parties (RFPs to Twitch 43, 44; RFPs to Amazon.com 44, 45; and
6 RFPs to AWS 55-56) were the subject (among other topics) of a Joint Discovery Letter (ECF No.
7 102), which was vacated by the stay in this case.

8 **DEFENDANTS' POSITION**

9 No additional action is needed to preserve third-party evidence at this time. BSD has not
10 articulated anything beyond a generalized concern that third-party evidence will be destroyed. BSD
11 has listed above the entire universe of third parties it disclosed in this case, from its Complaint filed
12 in January 2023 to its initial disclosures served in June 2023, but has not identified from which of
13 those parties it actually intends to seek discovery. Nor has it explained why the supposed risk of
14 document loss is greater now than it was before the case was stayed in March 2024. As noted in
15 Defendants' Opposition to Plaintiff's Motion to Lift the Stay, BSD waited to file this case until
16 nearly a decade after the first claimed infringing uses by third parties. ECF No. 113 at 8. At the
17 very least, BSD could have served more than one third-party subpoena in the 12 months of fact
18 discovery preceding the stay, despite being aware of each of the third parties identified above since
19 at least June 14, 2023.

20 Defendants have further not "refused" to identify third parties, as BSD claims. BSD does
21 not point to any specific discovery request in support of its statement because none exists. Rather,
22 BSD has served burdensome, irrelevant discovery requests. As discussed in the Joint Discovery
23 Letter: BSD demanded Defendants identify third parties with so-called "bespoke" agreements,
24 without articulating what the relevance would be beyond already-produced information. As that
25 would require manual review of more than 30,000 agreements, Defendants objected that burden
26 was not proportional to the needs of the case. This is the only discovery BSD has served directed
27 to "non-party streaming partners."

1
2
3 Dated: October 8, 2024

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ATTESTATION CLAUSE

I, Evan M. Rosenbaum, am the ECF user whose credentials were used in this filing. In compliance with Civil Local Rule 5-1(i)(3), I hereby attest that all signatories have consented to the filing of this document.

Dated: October 8, 2028

By: /s/ Evan M. Rosenbaum

Evan M. Rosenbaum